Honorable Barbara J Rothstein

FILED ENTERED
LODGED RECEIVED
APR 30 2003 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

RAYMOND LEICH, a resident of Florida, derivatively on behalf of EVERGREEN STATE RESTAURANT CORP., Plaintiff, vs CRAIG and JANE DOE EDWARDS, Washington residents, and their marital community, Defendants, and EVERGREEN STATE RESTAURANT CORP, a Washington corporation, Nominal Defendant	NO C03-0108BJR SECOND AFFIDAVIT OF SPENCER HALL
CRAIG R EDWARDS, on his own behalf and on behalf of EVERGREEN STATE RESTAURANT CORP, Counterclaimant and Third-Party Plaintiff, vs	

CV 03-00108 #00000048

48

ORIGINAL

HALL ZANZIG ZULAUF CLAFLIN MCEACHERN
1200 Fifth Avenue, Suite 1414
Seattle, Washington 98101
206 292 5900

RAYMOND M LEICH, an individual,)
CLIFFORD L JONES and LINDA JONES,)
and their marital community, and)
EVERGREEN RESTAURANT VENTURES,)
INC , a Washington corporation,)
)
Counterclaim Defendant and)
Third-Party Defendants)
)

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

SPENCER HALL, being duly sworn, states

1 I am counsel for defendants, counterclaimant and third-party plaintiff in this action I have personal knowledge of the matters stated in this affidavit

2 On February 26, 2003, this Court conducted a hearing on plaintiff's motion for temporary restraining order A copy of the transcript of that hearing is Exhibit 1 to this affidavit At that hearing before this Court, David Hoff, counsel for Ray Leich and Cliff Jones, promised that his clients would permit all shareholders to have equal access to the books and records of Evergreen State Restaurant Corporation ("Evergreen"), as provided in Craig Edwards' proposed bylaw on that subject A copy of that proposed bylaw is Exhibit 2 to this affidavit

3 Following the hearing, Messrs Jones and Leich refused to honor their counsel's commitment Their counsel told me that Mr. Jones was unwilling to permit Mr Edwards to come to Evergreen's place of business for any purpose They told me that Mr Jones wanted Mr Edwards to make requests for documents through counsel The

HALL ZANZIG ZULAUF CLAFLIN MCEACHERN
1200 Fifth Avenue Suite 1414
Seattle Washington 98101
206 292 5900

documents would then be copied All copies would be made at Mr Edwards' expense

4 Mr Edwards does not need copies of all Evergreen's documents He needs access to Evergreen's books and records so that he can extract information relating to the issues in this case Original records are preferable to copies in some instances For example, expense reports contain pencil entries and small pieces of paper that make originals easier to work with than copies Copies would be acceptable in other instances if there were not major cost issues

5 Since the February 26 hearing, counsel for Mr Edwards have incurred copying charges in excess of $7,000 to access information Most of these charges would have been unnecessary if Mr Edwards had access to Evergreen's books and records Mr Edwards also has incurred unnecessary legal fees because all information requests have had to be processed through legal counsel

6 There are major problems with the position of Messrs Leich and Jones barring Mr Edwards from access to corporate information First, mass copying is impractical from a cost standpoint Despite incurring substantial charges, we have copied only a fraction of the information that is needed Second, mass copying is wasteful Mr Edwards does not need copies of volumes of whole documents He needs access to the information in the documents and the ability to make copies of selected entries Third, requesting documents through counsel results in unnecessary legal expense, repeated delays, and professed misunderstandings about what is being requested We still do not have information that we have been requesting since before this lawsuit

HALL ZANZIG ZULAUF CLAFLIN MCEACHERN
1200 Fifth Avenue, Suite 1414
Seattle, Washington 98101
206 292 5900

began

7 I was able to obtain permission for Mr Edwards to have three work sessions with his own expense records The nature of those work sessions is described in Mr Edwards' affidavit I recently asked permission for Mr Edwards to resume working with his expense records Mr Jones' counsel reminded me that Mr Jones was unwilling to permit Mr Edwards to work with his expense records unless Mr Jones monitored him the entire time Mr Jones' counsel told me that Mr Jones no longer has the time to do that Consequently, Mr Jones has offered Mr Edwards the option of having all his expense records copied at his expense Alternatively, Mr Edwards can review his expense records at the offices of Mr Jones' legal counsel, where Mr Edwards will be monitored constantly by a paralegal. Mr. Edwards will be required to pay the paralegal's hourly rate

8 Messrs Jones and Leich claim that their treatment of Mr Edwards is justified because their accounting report (the "Hagen Report") purportedly shows that Mr Edwards cannot be trusted Moss Adams, a regional accounting firm, has reviewed the Hagen Report and relevant documents to which Mr Edwards has been permitted access Moss Adams has concluded that the criticisms in the Hagen Report are either incorrect or have no material impact Moss Adams' preliminary findings regarding each of the subject areas in the Hagen Report are summarized in a memorandum by W Arthur King, CPA and Managing Partner of Moss Adams A copy of the memorandum is Exhibit 3 to this affidavit

HALL ZANZIG ZULAUF CLAFLIN MCEACHERN
1200 Fifth Avenue, Suite 1414
Seattle, Washington 98101
206 292 5900

9 I am unaware of any reason that Mr Edwards should be barred from working with the original books and records of Evergreen at Evergreen's place of business There is no evidence that these parties have ever come close to having a physical confrontation or have had any problem other than a legal disagreement involving corporate control issues

10 We proposed a reasonable arrangement to counsel for Messrs Jones and Leich We suggested that Mr Edwards call a designated individual at Evergreen a day in advance whenever he wanted to review records at Evergreen He could be placed in an office or conference room of Evergreen's choice while he was there so that he did not get in anyone's way He could retrieve records himself or, if Messrs Jones and Leich preferred, someone could bring records to him Mr Edwards could check out when he left so that someone could confirm that he was not taking any records with him A copy of my letter to David Hoff and Janissa Strabuk, dated February 28, 2003, is Exhibit 4 to this affidavit This offer was rejected

Spencer Hall

HALL ZANZIG ZULAUF CLAFLIN MCEACHERN
1200 Fifth Avenue, Suite 1414
Seattle Washington 98101
206 292 5900

SUBSCRIBED AND SWORN to before me this 30th day of April, 2003

KAREN A. BENEDICT
COMMISSION EXPIRES
NOTARY PUBLIC
3-01-05
STATE OF WASHINGTON

Karen A. Benedict
(Signature of Notary)

KAREN A. BENEDICT
(Printed Name)

Notary Public in and for the State of Washington, residing at Bellevue
My Commission expires 3-1-05

HALL ZANZIG ZULAUF CLAFLIN MCEACHERN
1200 Fifth Avenue, Suite 1414
Seattle, Washington 98101
206 292 5900

EXHIBIT 1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

RECEIVED
MAR 06 2003
HALL ZANZIG
CLAFLIN McEACHERN PLLC

RAYMOND LEICH, a resident of Florida, derivatively on behalf of EVERGREEN STATE RESTAURANT CORP., Plaintiff, vs. CRAIG and JANE DOE EDWARDS, Washington residents, and their marital community, Defendants, and EVERGREEN STATE RESTAURANT CORP., a Washington corporation, Nominal Defendant	)	Case C03-108R
CRAIG R. EDWARDS, on his own behalf and on behalf of EVERGREEN STATE RESTAURANT CORP., Counterclaimant and Third-Party Plaintiff, vs. RAYMOND LEICH, an individual, CLIFFORD L. JONES and LINDA JONES, and their marital community, and EVERGREEN RESTAURANT VENTURES, INC., a Washington corporation, Counterclaim Defendants, Third-Party Defendants	)	

COPY

HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER on February 26, 2003, before the Honorable Barbara Jacobs Rothstein, United States District Judge, at the United States Courthouse, Seattle, Washington.

Appearances of Counsel.

On Behalf of Plaintiff. DAVID HOFF ERIC BLANK
Attorneys at Law

On Behalf of Defendant: SPENCER HALL RONALD BEARD
Attorneys at Law

Sue Palmerton, Official Court Reporter
(206) 553-1899

Seattle, Washington, Wednesday, February 26, 2003; 3 07 p.m

THE CLERK. Calling case number C03-0108, Raymond Leich versus Craig and Jane Doe Edwards. Counsel, please make your appearance.

MR. HOFF. Yes. Your Honor, my name is David Hoff. I'm the attorney for the plaintiff And my co-counsel is Mr. Eric Blank.

MR BLANK: Good afternoon, Your Honor.

THE COURT. Good afternoon

MR. HALL Your Honor, I'm Spencer Hall. I represent Craig Edwards and his marital community. Seated next to me is Mr. Edwards and on his right is Ron Beard He is appearing as co-counsel with us in this case.

MR BEARD. Good afternoon, Your Honor.

THE COURT Mr. Hoff, you are going to lead off?

MR. HOFF: Yes, Your Honor

THE COURT· And I was figuring about 20 minutes a side. Would that be enough?

MR HOFF. If that. Yes, I think it will be enough.

THE COURT You want to save some time for rebuttal?

MR. HOFF. Yes, I would, Your Honor.

THE COURT. All right.

MR. HOFF: Your Honor, we are before you today simply to ask to restrain a shareholders meeting to take place until such time as a preliminary hearing can be held on our

injunction. To just give you the briefest background in this case.

Evergreen is the corporation which has joint ventures with limited partners that own 27 restaurants, Outback Steak restaurants. Each one of them is a separate franchise that is issued

Evergreen is a corporation that was managed by Mr. Edwards until approximately three years ago when Mr. Edwards had some difficulties, some medical difficulties which affected his health, and there were some drinking problems that caused him to go to alcohol treatment centers. And Outback Steakhouses said that you have to get him out of management of this company or else we're going to pull the franchises

And they asked that Mr. Jones, who was a passive investor in these franchises and in Evergreen, they asked that Mr. Jones come in and he be the manager of the operation And that if he would do so, they would not -- they would not interfere with the franchises and they would let the franchises exist.

Mr. Jones did so and formed a management company called Evergreen Ventures, Inc. which is referred to as ERVI, E-R-V-I, in the papers in front of you. And ERVI undertook the managements of these 25 Outback Steakhouses.

This was pursuant to an agreement between Mr. Edwards and Mr Jones whereby ERVI would manage these restaurants and these franchises and the joint venture partners, the limited partners

in this venture. And that they would do so and they would take a management fee which amounted to, I believe it was 200 -- around $250,000 a year, which was the same fee that Mr. Edwards had been taking previously as manager.

The way that ERVI managed the business was to not distribute the money all out, but to keep the money back in the corporation for the benefit of the restaurants and the partners.

What happened is that disputes arose between the parties. This agreement has been in operation for about two years with ERVI running Evergreen -- or not running Evergreen, but running the restaurants.

There was a dispute that Mr. Edwards originally raised that he thought that there were some conflicts of interest on behalf of ERVI. For that reason, an independent public accounting firm was hired And that independent public accounting firm which was hired on January -- pardon me, which was hired last year was Hagen Streiff Newton and Oshiro.

They came back and gave a preliminary report where they said we found nothing wrong, we don't find any conflicts of interest, but there are some very strange looking financial transactions in this company, and we feel that you should have us do some further looking.

All of the parties, including Mr. Edwards, agreed that Oshiro, et al., should continue to look at the books of the company. They did a sampling looking at four of the 27

restaurants. And in that sampling, they discovered that there were fraudulent activities performed while Mr Edwards was in charge of the country -- of the company, including the fraudulent requests for reimbursement and expenses.

And one of the examples was a $25,000 airline ticket to Australia which was paid by Outback, but he then took a copy of the ticket and also submitted it for reimbursement to the company. And just matters where he would supply copies of American Express charges that included all of the copies, the original copy as well as the copies, that obviously it was not even submitted to the restaurant.

What they said in their report of the four restaurants they looked at -- remember we're talking about four out of 27 -- they have discovered that there was over $200,000 of these misallocated funds. And they said and I'm going to quote, they said that, "The duplication of items, especially airfares where ticket receipt, travel agent statement and credit card statement are all submitted for reimbursement of the same go beyond simple mistakes or careless errors. These repeated and blatant duplications indicate that the intent was to be reimbursed for expenses not incurred."

This in addition to other -- list of other things that are contained in our pleadings and contained in the demand letter that was made to the corporation indicated that there were fraudulent activities that had been performed by Mr. Edwards

which materially affected the financial statements that these steakhouses and these joint ventures had given to the lending institutions that were financing them to the tune of about $250,000 per restaurant to buy restaurant equipment, and not to mention potential liabilities to the limited partners, which, you know, haven't even been addressed yet.

So, as a result, they received this accountant's report on January 13th Upon receipt of it immediately distributed it to all the directors, including Mr Edwards. Called a shareholders meeting with a request that there be a shareholders action brought against Mr. Edwards. And that a suit, a minority shareholder impression suit and a derivative shareholders action be brought to try remedy these activities, have Mr. Edwards pay back to the company what he unlawfully put in there. And frankly, Your Honor, to deal with the potential of other liabilities to banks, lending institutions and limited partners that flowed from fraudulent financial statements

Mr Edwards, who had never done anything to cause any action, any change in the bylaws, anything to happen with this corporation prior to this meeting and this demand, upon the filing of the lawsuit immediately filed a request, as you can see here, that there be a shareholders meeting

The intent of the shareholder meeting, and there are some things that he's listed as the intent of that meeting which are fairly innocuous, but the worst, the worst part of the proposed

amendments are to basically restrict the management of ERVI, Mr. Jones' corporation, of these restaurants and to basically turn over the control of the funds back to Mr. Edwards, who was the subject of the accounting statements which found him guilty of fraud.

THE COURT. Okay. Now, why don't you point out to me which of these amendments does what you're saying.

MR. HOFF Yes, Your Honor.

THE COURT: It's hard to follow them because many of them refer to articles.

MR HOFF· First of all, Your Honor, it says that under article, proposed article 8 which is on page 2 of the proposed amendments, it says all of the corporation's revenues will be applied and distributed in accordance with provisions of this article 13 -- I think I misstated. It's article 13 -- unless otherwise agreed in writing by shareholders holding not less than two-thirds of the corporation's shares That would be Mr Edwards, he owns 70 percent.

It says under section 2 that all of the corporation's costs of doing business, however characterized, will be paid from the management fees. The corporation's cost of doing business will be deemed to include, but will not be limited to rent, salaries, legal expenses, accounting expenses, advertising, equipment and supplies.

Evergreen is not managing these restaurants pursuant to the

agreement with Mr. Edwards and pursuant to Outback's demand. The management is being provided by ERVI. So, what they are saying is that now Evergreen gets these revenues.

And section 3 says revenues other than management fees. The affairs of the corporation will be conducted so that all revenues other than management fees will be distributed to the corporation's shareholders. That means that it will be a direct funnel to funnel out 70 percent of all the money that comes in to Mr. Edwards since he is the 70 percent shareholder of the corporation.

This will result directly in Outback lifting these franchises. Its irreparable harm is that these whole franchises are now in existence because an arrangement was negotiated that Outback demanded And that is that Mr Edwards no longer have any management control

The other is article 14, which requires -- and you see what is happening here is they're taking normal activities that would be done by management and making them to require shareholder control So that Mr. Jones -- pardon me, Mr. Edwards as the majority shareholder would have direct control over the operations.

They couldn't sell or exchange or dispose of any capital assets except as approved by Mr. Edwards. They couldn't loan funds or other assets to the corporation except as approved by Mr Edwards. They couldn't terminate, amend or transfer any

interest in a franchise agreement except as authorized by Mr. Edwards. They couldn't do anything with a limited partnership agreement or a joint venture agreement or anything related to the limited partners except as approved by Mr. Edwards.

Now, these are very drastic sorts of actions. You're taking the management of a corporation and you're saying we're giving the management of the corporation to the majority shareholder. This is exactly one of the bases of the majority shareholder impression suit that we're bringing And this is a continuation of the activities which have already been found to amount to mismanagement when Mr. Edwards was running this.

And, again, Your Honor, we're not asking at this point for some permanent injunction enjoining him to do this All we're asking is that this is such a drastic step that can cause such irreparable injuries, that we want this -- we want to have this meeting postponed until a full hearing can be held on the preliminary injunction.

THE COURT· Thank you Mr. Hall.

MR. HALL. May it please the Court As you might imagine, we have a greatly different view of things. Our view simply is this is a business dispute. It requires a business solution.

There's two ways of approaching this. We can either have these parties resolve their differences by using their corporate rights that they have pursuant to the rules of corporate

governance to resolve their differences or we can have court intervention.

If we are going to have court intervention, in my view the opposing sides should be seeing if they can meet the standard for the appointment of a receiver or something of that nature. Somebody who can get in here and protect both sides.

It is not appropriate to ask this Court or any court to selectively interfere with corporate rights. And what they are asking this Court to do is to strip Mr Edwards of the only protections he has to protect himself against their actions and let them continue doing what they want.

Now, the facts in this case are complex and they're a mess and I'm not going to go over them. But I would like to just make sure the Court understands a couple of things which I think can be confusing.

Outback said that they no longer wanted Mr. Edwards to be the designated operating partner for Evergreen He had some alcohol problems. He sought treatment. But they didn't want him to be the operating partner.

It was Evergreen's right. And I might add, at that point there was no suggestion that Mr Edwards had ever done anything improper, any accounting improprieties, that there was any self-dealing. There was simply a problem with the economy was down, sales weren't that good and Mr Edwards had an alcohol problem and they wanted a new operating partner

They said that Mr. Jones would be an acceptable alternative. They said that Mr. Shannon would be an acceptable alternative. They said that Evergreen could propose someone else. Outback has absolutely no right to select the operating partner. That is Evergreen's decision.

Mr. Edwards cooperated and he said fine, Mr. Jones is acceptable And the idea was that Mr. Jones would run the restaurants, the restaurant operations, 27 existing restaurants. There was never any intention that Mr. Edwards would lose his right to have input as a director and shareholder over major decisions such as disposition of assets of Evergreen.

And what happened was Mr. Jones said, you know, if we open new restaurants, I really think it would be fairer if I got to have those for myself, and Outback thinks that would be a good idea, too. Would you agree to that? And I'd like to form another corporation and when we open new restaurants, I would like to get those for my corporation.

Mr Edwards said, well, you know, I guess that's not a problem assuming we work everything out and it doesn't hurt Evergreen. So, he formed -- Mr. Jones formed his new corporation, ERVI. And they talked about how the two corporations were going to operate side by side.

And it didn't make any sense to have two sets of employees and two sets of office space and so forth, so Mr. Jones said why don't we -- I will transfer the employees over to my corporation

and you can just contract management services from my corporation. Mr. Edwards says, well, fine, and we'll pay you the net management fees from Evergreen.

So, that's all great up to that point. And they start out to document this. And Short Cressman says wait a minute, we've got a conflict here, let's get some independent counsel. So, that happened

Then there were never any documents drafted, which you have two very distinct corporations here, ERVI and Evergreen. Mr Jones is a designated operating partner for Evergreen Everything he does for Evergreen is done on behalf of Evergreen. He owes his duties to Evergreen, to these 27 restaurants

And he also wears another hat. He is the CEO and owner of ERVI. And for five of these restaurants, he's operating as the designated operating partner for ERVI, the other corporation. So, there is a potential for a mess here.

And what was supposed to happen is Evergreen would have greatly reduced operating expenses because they didn't have all these employees anymore But they would have some expenses like attorneys fees, Short Cressman. They'd have some accounting fees, they'd have some license fees, maybe a few hundred thousand dollars a year. Those were supposed to be paid. And then Mr Edwards was ready to have the rest of the management fees paid over to ERVI on a contract basis to use some of their services to manage these things.

Basically what happened was Mr. Jones got in there and decided he just didn't want to ever have to deal with Mr. Edwards again and just basically started combining these two corporations, which was never intended by anybody.

And what has happened is that we, Mr. Edwards basically has acted with restraint throughout this. He has written letter after letter asking for simple things like I just want access to corporate information, and he can't get it. He has written letters saying please stop commingling the funds. You don't need to commingle the funds between these two corporations to do what was intended. And he gets different answers. At one time, we hear an answer that the commingling will be stopped. At other times, they don't get any answer.

Then there is this issue of transactions between the two corporations where there is conflicting interests. And an example of that is this cross-collateralization of a loan from the bank. Now, we aren't trying to interfere with any existing relationship or any -- of any contract in existence. That is not what's going on here

And Mr. Edwards found out after the fact they had cross-collateralized a loan so that the assets of Evergreen are being pledged for the debt of ERVI And that's a concern potentially. Because although in the affidavit that was submitted, Mr Jones said that Evergreen has more debt than ERVI, 2.2 million to 1.7, that is a little misleading because Evergreen has 27 stores, so

it's got debt of 81,000 per store ERVI has debt of 340,000 per store.

THE COURT: Just out of curiosity, what are the assets that are being cross-collateralized? Are they the franchise agreements?

MR. HALL. It's my understanding it's everything. It's the leases, the stores. It's the cash that is in the account

THE COURT. So, it's the right to payments from the restaurant. That is what we're talking about?

MR HALL My understanding is it includes that, but there are also physical facilities and leases.

THE COURT· But Evergreen doesn't own any of the physical facilities, does it?

MR. HALL: No But it's a general partner in the limited partnerships that do

And so, the point is this. There is $340,000 of debt per store on Mr. Jones' restaurants So, his budding business is a lot more risky and a lot more leveraged. All Mr. Edwards asked for was on a going forward basis when it comes time to consider whether we want to have an arrangement to cross-collateralize between these two corporations, that he have a say in that He's not trying to undo anything in the past. Mr. Jones has said no to that.

And on these management fees, Mr. Jones basically said I'm not going to pay any expenses of Evergreen anymore. What I'm

going to do is I'm going to take all the management fees over to ERVI, a million-600,000 dollars each year roughly, and this $200,000 of expenses that are remaining, I'm just going to charge that to the investment income of Evergreen and you, Craig Edwards, can pay 70 percent of that and it's tough luck. And that was not the deal. There is nothing that suggests that was the deal And we've said please quit doing that and he said no.

So, finally, finally we wrote letters that were increasingly tough saying, you know, please respond to this or we're going to have to take legal action. And they filed this lawsuit, in my view, as a preemptive matter to get an advantage over us and maybe they succeeded, I don't know.

But what I do know is that you could litigate this whole lawsuit to conclusion and it wouldn't change the fact that these parties need to get along. That these parties need to reach a business deal as to how they're going to proceed

And we have suggested again and again third-party mediation, anything that will work. All we want defensively, protectively and I think it's more than reasonable is we want equal access to information. We can't even respond to this ridiculous accountants' report because we can't get access to the books and records of the company

We want agreement that if any new transaction is entered into between Evergreen and ERVI, these two companies, where there is a conflicting interest by Jones or Leich, that we are

involved in that decision. They can't just ignore us and deal with their own company on new transactions, which seems to me very modest.

And if there is going to be any impairment of the assets of Evergreen, I'm not talking about the day-to-day operations of the restaurants or who manages the restaurants and how they sell their steaks. No body is interested in that. And that is what Outback doesn't want Mr. Edwards interfering in.

There have been no amendments to any of these franchise agreements since the inception of the company. There is no reason there should be any amendments now. There is no reason anybody should transfer these franchises to a third party.

What they won't provide assurances they won't do, they won't even provide assurances they won't transfer these franchise agreements to themselves And in fact, at one point they asserted in a letter that they had assigned all these management fees formally to their own company So we wrote and asked where is the assignment agreement, and they said, well, there's not really one. So, that's what we want in terms of standstill.

On the money, I'll tell you what is happening on the money because it always comes back to the practicalities. This company, Evergreen -- forget ERVI for a minute -- but Evergreen has roughly $3,000,000 in investment income every year. It is Mr. Edwards' essentially his sole source of income, his share of those distributions. It has a $1.6 million it gets in

management fees. So, we're talking about $4.6 million that these people have control over.

Mr. Edwards can't incur one dime of expense on behalf of Evergreen because he's not an officer, he's not involved in running the corporation. And if we pass these bylaws, he still couldn't go out and incur one dime of expense. We're talking about expenses being incurred by Cliff Jones on behalf of Evergreen and then he's refusing to pay them out of the management fee So, there is --

THE COURT What do you mean he's refusing to pay them? Who is paying them?

MR HALL He takes the investment income of Evergreen and pays that and then takes all the management fees for himself .

THE COURT: For himself or running the company?

MR HALL· Well, you can label this any way you want. When Mr Edwards was the CEO and designated operating partner of Evergreen, the way it worked was the roughly million-six would come in. He'd pay the employees, the rent, the lawyers, the accountants, whatever other expenses there were. He would take a salary. If there was anything left over, they would distribute it to all the shareholders All right? And sometimes there was something left over.

The way it works now -- it's not supposed to be working this way -- the money never even hits the Evergreen bank account

Mr Jones -- although you can pick up one of these franchise agreements and they put it into evidence and it says right there on page 14 Evergreen gets the money. But it never hits the bank anymore. They just divert it over to ERVI. Take it all for themselves. Don't pay the accountants or lawyers back over at Evergreen.

And worse than that, they take the $3,000,000 of investment income, kind of slosh it around over at ERVI for a while and fund their restaurants and use it however they want And eventually pay some back and make some belated distributions to Mr. Edwards.

THE COURT Is Mr. Edwards getting a salary?

MR. HALL: No. He gets a salary from nowhere. He is dependent for shareholder distributions to live, to pay his bills, to pay me.

THE COURT: What is he doing for the corporation right now?

MR. HALL: Nothing He's a shareholder

THE COURT: Then why should he get a salary?

MR. HALL: He shouldn't. He should get shareholder distributions

THE COURT. So, what is his concern, that he's not getting a sufficient distribution because too much is taken out of the investment income account?

MR. HALL: Yes His concern is that they're reducing

the distributions by diverting part of the funds where they shouldn't, and they are using the monies of Evergreen to -- putting them at risk running ERVI and won't even give him a say.

Like when the bank comes up in renewal in a couple of months, they will just ignore him and do what they want with Evergreen's assets. He should have a say in that That was the idea. He would have oversight, but he wouldn't be involved in day-to-day operations, he wouldn't draw a salary.

THE COURT Let me ask you something Were you finished, just about? Did you have more?

MR HALL: In what I want to say to the Court? I did have something else I wanted to say, but I'm happy to respond

THE COURT. Go ahead. I want to hear the rest.

MR. HALL: I guess, you know, I guess here's my point and I don't want to belabor the facts. But certainly they have looked at everything in this case. I mean, they say four out of 27 restaurants they have looked at. They've looked at four out of 27 restaurants when they want to argue about these accounting treatments. But in terms of anything that could be self-dealing, they have looked at the whole nine yards.

They've looked at eight years. They've looked at every expense Mr. Edwards ever turned in and we deny there is one single dollar of self-dealing.

But if everything they said was true, Your Honor, we're talking about $70,000 or so. I mean, it's just insane If they

won this case, they wouldn't be entitled to the relief they're seeking.

So, I guess where I end up is where I started, which is if this Court is going to strip Mr. Edwards of his ability to try and protect himself in this mess and try to negotiate a resolution, we're in trouble. We need to negotiate with our full rights so they can't basically take this corporation for a song And that's what I want.

So, either I'm happy if you leave the parties to their own devices or I'm happy if you want to step in and say, hey, just hold everything. You guys don't take another dollar out of here. You guys, you know, don't do any new transactions until we sort this out. I would be happy with that.

But I would not be happy being left hanging in the middle where we're stripped of our ability to protect ourself. I guess that's what I'm trying to say.

And finally most importantly, the way it stands right now they have money to fund their accounts, to squeeze Mr Edwards. I mean, they're using the corporate funds, these management fees to hire like this accounting firm that went out and concocted this report. That should have been hired on their own nickel because it's a shareholders dispute and that was not authorized. We have no money to hire accountants because they're dragging their feet on distributions.

So, we have to make sure the money flows evenhandedly so

that they don't choke us to death if we're going to havee a dispute. I'm happy to do it either through bylaws or through the Court, but it should be evenhanded is all I'm saying.

THE COURT: Thank you, Mr. Hall. Mr. Hoff, you want to respond?

MR HOFF. Yes, Your Honor. Obviously there's a lot of disputed facts here and it's not going to serve any useful purpose to go back and forth on the disputes.

But I do want to just read you a paragraph from Mr. Jones' declaration which was filed in response to a submission by Mr Hall, which is paragraph 13 on page 5 of his declaration, where he says, "Let me reemphasize how the management fees are being used. Management fees pay for critical management and accounting support for the restaurants owned by the various limited partners. ERVI also uses fees to pay for technical support and training related to food items and service and for the salaries of managers in training ERVI also has used the fees in the past two years to rebuild the marketing effort not undertaken by Edwards For example, ERVI purchased a billboard at Safeco Field in Seattle to promote Outback Steakhouse restaurants and to secure a lucrative co-marketing agreement with the Seattle Mariners."

THE COURT· I can read the rest of it, Mr Hoff I've got it right here.

MR. HOFF· The point is, Your Honor, that the issue

here is whether the money that comes in should be used to reinvest in the restaurants and the business and go to the limited partners or whether it should be distributed to Mr Edwards.

And one of the big issues that Outback had, and there is no dispute and you've heard no dispute here that Outback said you've got to get Mr. Edwards out of control And, of course, there is a dispute in the affidavit because Mr. Jones said it was Outback that mandated he be the person

The reason that was done is because money was being taken out of these franchises. The restaurants weren't operating properly. We're just asking to preserve the status quo pending the hearing. That's all, Your Honor.

THE COURT Okay. Well, the Court has no problem in dealing with the issue before it today. I think -- I guess what I was going to ask you, Mr. Hall, was -- but I think I already arrived at a conclusion about it. I fail to see in balancing harm here, I fail to see any dire need on the part of Mr. Edwards to pass these amendments immediately. It just doesn't wash with me And that would seriously change the status quo.

He would basically by these amendments, I'm convinced, be put in a position where he could manage just about every important decision that would come up.

So, I am going to grant the temporary restraining order But that's really not the end of it and I think Mr. Hall has

made a good point.

The real question is where do we go from there And I think that this is not -- when I say I'm granting the temporary restraining order, I think the way in which the Court sees this, yes, he is not going to be able to hold a shareholder meeting and pass his own amendments that make everything require 70 percent shareholder to run the corporation.

On the other hand, as far as plaintiffs are concerned, there are definitely certain transactions in which Mr Edwards should be given information. I don't see anything wrong with the amendment requiring him to get corporate information That is not going to hurt anybody That should be done.

MR. HOFF. Nor do we, Your Honor.

THE COURT. Shouldn't be opposed.

MR HOFF: I agree

THE COURT: So, why don't you drop that part out of your TRO.

MR. HOFF We will be happy to agree or we'll simply agree that we will give them any of the information they want, as we have previously. That is a disputed item, too.

THE COURT I don't want to hear a dispute about it. I want him to get any corporate information he needs.

MR. HOFF We agree, Your Honor.

THE COURT: I could sit down and do this with you on an agonizing line-by-line basis. But I want to know exactly what

are the areas that he is asking -- I mean, the way I interpret what Mr. Hall has said is that he is asking and using these amendments as a way of gaining information and input that has been denied him. And that were he able to have some input into this, were he able to be informed of some of the big events that are coming up, like cross-collateralization when it happens or new loans that are coming up, he wouldn't need amendments to ensure that he be given that information or that he at least be notified when this big events are coming up

I can sit here and say, okay, these are the things Mr. Hall has mentioned a few. I could sit here and say, okay, so he should be told if there is ever going to be cross-collateralization. He should be told if there are going to be renewals of loans or financing with the bank Well, information on how the management fees are being used, and how the investment income is being distributed and what it's being used for You know, if these were given to him, he wouldn't need the amendments that he's asking for.

Now, it's very clear to the Court that -- I can say this as a mastery of understatement -- that there is a lack of trust on the part of the parties. That sounds like understatement to me. You know, the parties have said some -- are really saying some pretty ugly things about each other through their lawyers as they stand up here today.

Once that is done, it would do no good for me to say go out

and work this out. I doubt that is going to happen in the context of a suit in which each side is basically saying the other side is dealing improperly with great sums of money. We're not talking small sums of money here

One of the reasons I'm ruling the way I'm ruling, just so that the parties know is I do think that not maintaining the status quo could result in more harm than good, you know. Mr Edwards may win -- if he won his point, may lose -- win the battle but lose the war. If Outback kicks everybody off managing these restaurants, what good is it going to do?

So, I think the status quo is to not not deal with these amendments right now, but I am much more concerned with how to proceed with this in the future. Maybe the way to deal with this is not to deal with it in open court. To get some advice from counsel in chambers on some procedural way that we can get this on a track where the parties might be able to, given the lack of trust, might be able to work with each other, either through a third party or whatever. So, maybe that is the way to go

Because I've given you my ruling on the TRO, but that is not only going to take care of the next ten days. Maybe renewal in the next ten days But the amendment part of it is just a side show. What's going on here are some real underlying problems And there must be ways that we can implement to help the parties work this out.

As you've all pointed out, nothing ever got done in writing. That might resolve some of these. So, why don't you come into chambers and let's try to be a little creative here.

MR. HOFF. Before we do so, Your Honor, could you set the amount of the TRO bond?

THE COURT. What's the harm? Mr. Hall, what do you want? What is the harm to him? What is the danger of his losing anything by not getting these amendments passed in the next couple weeks? I have a hard time seeing what it is, so.

MR. HALL. Well, Your Honor, if counsel is basically representing that they're not going to try to transfer any of the assets, you know, try to do any new deal, get rid of these assets, major transactions until we can talk this out with the Court, I think that you're right, for the next ten days it's not a big deal. But I would be very distressed, for example, if we waited ten days and came back and found out they had done a transaction.

THE COURT: This is exactly what I want to deal with in chambers. I think it has to be a two-way street. But I heard Mr. Hoff saying that, that status quo meant exactly that That they're not going to use the couple of weeks in which I have basically enjoined him from holding this meeting to go out and transfer all the assets that he's concerned about and that is why he wanted the amendments That is not what the Court envisions.

And I want to find -- actually what I'm hoping we can talk about is a way to get an agreement between the parties that can make you live with this until we can work out the major problems underlying the whole suit. I mean, there is a way to just put everybody at ease. Since you don't trust each other, they're not going to do it on a handshake. But we could do it by an agreement between the attorneys who I think, knowing both of you, do trust each other and will pursue your clients' interest. And frankly your clients' interest in this case is to work something out.

MR. HALL. In the spirit of trying to generate some trust, Your Honor, if that is the deal and the understanding staying, I'm not going to make an issue over a bond for the next ten days.

THE COURT: I'll see you in chambers.

(At 4:03, court was in recess)

CERTIFICATE

I, Susan Palmerton, court reporter for the United States District Court in the Western District of Washington at Seattle, was present in court during the foregoing matter and reported said proceedings stenographically.

I futher certify that thereafter, I, Susan Palmerton, have caused said stenographic notes to be transcribed via computer, and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 3rd day of March, 2003.

Susan Palmerton

EXHIBIT 2

EVERGREEN STATE RESTAURANT CORP.
3650 - 131ST Ave. S.E.
Bellevue, Washington 98006
(425) 562-9850

February 14, 2003

SENT VIA FAX AND REGULAR MAIL

Mr. Raymond M Leich
Leich & Associates
1304 DeSoto Avenue, Suite 404
Tampa, Florida 33606

Mr. Raymond M. Leich
P O. Box 14476
Tampa, Florida 33606

Mr. Clifford L. Jones
Evergreen Restaurant Ventures, Inc
3650 - 131st Avenue S E., Suite 320
Bellevue, Washington 98006

Mr. Clifford L Jones
2800 Ocean Boulevard
Corona Del Mar, California 92625

Gentlemen

Please be advised that there will be a special meeting of the shareholders of Evergreen State Restaurant Corp. at the offices of Short, Cressman & Burgess PLLC, 999 Third Avenue, Suite 3000, Seattle, Washington, at 9.00 a.m. on Monday, February 24, 2003. The agenda will be adoption of the attached First Amendment to Bylaws of Evergreen State Restaurant Corp.

If either of you would like to participate by telephone, please let me know in advance of the meeting the telephone number at which you can be reached.

Very truly yours,

Craig R Edwards

Craig R Edwards

FIRST AMENDMENT TO BYLAWS OF EVERGREEN STATE RESTAURANT CORP.

The Bylaws of Evergreen State Restaurant Corp. are hereby amended effective as of February 24, 2003 to replace the existing Article IX with Article IX set forth below and to add Articles XII through XV set forth below.

ARTICLE IX

AMENDMENT OF BYLAWS

Section 1. By the Shareholders. The shareholders may amend or repeal these Bylaws or adopt additional Bylaws, but only with the approval of shareholders holding not less than two-thirds of the Corporation's shares

Section 2. By the Directors The Directors may not amend or repeal these Bylaws or adopt additional Bylaws without shareholder approval as provided in Section 1 of this Article IX.

ARTICLE XII

ACCESS TO INFORMATION

Each of the shareholders will have the right to unlimited access to the originals of all books and records of the Corporation and any other information within Evergreen's possession or control. Such right of access, includes, but is not limited to, unlimited access to information and materials in

the possession or control of attorneys, accountants, banks and other persons and entities who have provided services for Evergreen.

ARTICLE XIII

CORPORATE REVENUES

All of the Corporation's revenues will be applied and distributed in accordance with the provisions of this Article XIII unless otherwise agreed in writing by shareholders holding not less than two-thirds of the Corporation's shares

Section 1. Background and Definitions. Evergreen is a participant in joint ventures that are the general partners in Evergreen State Limited Partnerships 1 through 27 (the "Limited Partnerships"). Each of the Limited Partnerships owns and operates an Outback Steakhouse restaurant pursuant to a franchise agreement with Outback Steakhouse of Florida, Inc The franchise agreements and the agreements for the Limited Partnerships provide that Evergreen will receive a fee based on a percentage of the gross sales of the Outback Steakhouse Restaurants for providing management and accounting services ("Management Fees")

Section 2. Management Fees. All of the Corporation's costs of doing business, however characterized, will be paid from Management Fees. The Corporation's costs of doing business will be deemed to include, but will not be limited to, rent, salaries, legal expenses, accounting expenses, advertising, equipment and supplies. No Management Fees will be paid to any shareholder,

director or officer of the Corporation, or to any entity in which any such person has an ownership interest, unless the Corporation's costs of doing business are first paid in full from the Management Fees.

Section 3. Revenues Other than Management Fees. The affairs of the Corporation will be conducted so that all revenues other than Management Fees will be distributed to the Corporation's shareholders without any deductions. Such distributions to the Corporation's shareholders will include, but will not be limited to, all revenues other than Management Fees to which the Corporation is entitled from any joint venture or partnership in which the Corporation is a participant. Such distributions to the Corporation's shareholders will be made monthly.

ARTICLE XIV

ACTIONS REQUIRING SHAREHOLDER APPROVAL

Neither the Corporation, its officers or directors will take or approve any of the actions set forth in this Article XIV without the written agreement of shareholders holding not less than two-thirds of the Corporation's shares. Any action taken in violation of this paragraph may be voided at the election of any shareholders who did not provide written approval of such action. Actions requiring shareholder approval as provided in this Article XIV include, but are not limited to:

a. Selling, exchanging or disposing of any capital asset of any of the Limited Partnerships or of the Corporation if the total value of all capital

assets sold, exchanged or disposed of by that Limited Partnership or the Corporation during any 12-month period would exceed $100,000;

b. Loaning funds or other assets of the Corporation to any other person or entity, guaranteeing the debt of any other person or entity, or using assets of the Corporation as security for the obligation of any other person or entity,

c. Terminating, amending or transferring any interest in a franchise agreement, limited partnership agreement or joint venture agreement relating to any of the Limited Partnerships or the Corporation,

d. Maintaining funds from the operations of any of the Limited Partnerships anywhere other than a bank account in the name of that Limited Partnership or in a bank account in the name of the Corporation, or maintaining funds belonging to the Corporation anywhere other than a bank account in the name of the Corporation;

e. Any action or transaction for which one or more directors has a conflicting interest;

f. Any other action requiring shareholder approval under the terms of the Corporation's Articles of Incorporation, the Corporation's Bylaws or applicable law;

g. Any renewal or extension of any of the actions described above.

ARTICLE XV

REMEDIES

Any shareholder is authorized to take legal action on behalf of the Corporation for any breach of these Bylaws

BE IT KNOWN that the foregoing First Amendment to Bylaws of Evergreen Sate Restaurant Corporation was adopted by the shareholders at a special meeting on February 24, 2003. In witness whereof, I do hereunto subscribe my name

____

EXHIBIT 3

MOSS-ADAMS LLP mri

CERTIFIED PUBLIC ACCOUNTANTS

1001 Fourth Avenue, Suite 2900
Seattle, WA 98154 1199

Phone 206 223 1820
FAX 206 622 9975
www mossadams com

March 20, 2003

Mr. Ronald Beard
Lane Powell Spears Lubersky
1420 Fifth Avenue
Suite 4100
Seattle, WA 98101-2338

Mr Spencer Hall
Hall Zanzig Claflin McEachern
1200 Fifth Avenue
Suite 1414
Seattle, WA 98101

RECEIVED
MAR 2 0 2003
HALL ZANZIG
CLAFLIN McEACHERN PLLC

Re Edwards vs Leich

Dear Sirs

We were asked to review certain information and reports in connection with the Edwards vs Leich litigation. You also wanted us to comment on the report prepared by Hagen Streiff Newton & Oshiro (Hagen), dated January 13, 2003. The purpose of this memorandum is to provide you with our preliminary findings regarding each of the twelve findings in the Hagen report, as well as other general comments

Finding #1 – Cash credits given by ESLP landlords are improperly recorded on ESLP's books and records.

This finding deals with the accounting for tenant improvement allowances provided by the landlords directly to Evergreen State Restaurant Corporation (ESRC) The Hagen report incorrectly concludes that these credits should have gone directly to the limited partnerships Their report includes an excerpt from a lease identified as their Exhibit 1 We also reviewed the leases and agree that the tenant allowances are discussed in them. However, the "Estimated Sources and Uses of Proceeds" from the Private Placement Memorandum (PPM) clearly states the amount of the allowances and that they aren't included in the estimates of receipts and expenses. Exhibit 1 of this report includes this excerpt of the PPM The actual transactions of the tenant allowances occurred between the landlords and ESRC, with the checks going directly to ESRC The reason for this arrangement was because ESRC was guaranteeing the lease

MOSS-ADAMS LLP mri

The Hagen report also focuses on tax considerations, not Generally Accepted Accounting Principle (GAAP) considerations For GAAP purposes, the professional standards allow for this type of transaction where the tenant improvements are shown at the gross amount by the limited partnership. It is our understanding the Plaintiff, Ray Leich reviewed the accounting for these transactions when preparing the year-end books for the auditors and for his use in preparing the tax returns The original transaction was recorded in ESRC as an increase in cash and capital. It should also be noted that Mr Leich (Plaintiff) prepared all the tax returns consistently with how they were reported in the financial statements We reviewed a schedule prepared by Mr Edwards, verifying that all of the limited partnership tax returns were prepared without any adjustments to decrease tenant improvements for the allowances We reviewed the Burlington and Coeur D'Alene tax returns from Mr Edwards schedule and verified that the returns were prepared without adjustments to the tenant improvements This fact contradicts the last paragraph of Finding #1 of the Hagen report, which states, "the credit had been applied, in some locations, for tax purposes "

In our discussions with Mr Al Willett, the CPA who performed the audit/review of the joint ventures, he assumed that since Mr Leich (Plaintiff) had reviewed the records prior to forwarding them, these transactions were properly recorded Mr Willett also indicated there were no notes payable to ESRC or the JV's indicating the amounts needed to be repaid to ESRC. Therefore, the recording of them as capital is proper

Based on the information that we have reviewed to date, it is our opinion that the accounting for these tenant improvement allowances was recorded correctly and in conformance with GAAP and with the terms of the PPM Our research of the Professional Accounting Standards, Technical Bulletin 88-1, *Issues Relating to Accounting for Leases*, confirmed this accounting treatment. Our Exhibit 2 includes a memorandum written by Craig Edwards to Wyndham Smith, of Deloitte and Touche, outlining the accounting for the lease transactions and Mr. Smith's reply indicating the accounting is appropriate and correct Mr Smith's memorandum also includes the applicable section of Technical Bulletin 88-1

MOSS-ADAMS LLP mri

Finding #2 – Unsubscribed units were attributed to the general partner without evidence of payment.

The PPM for the Burlington Franchise #27 indicates that "up to 15 units of the limited partnership interest" were to be sold at $50,000 per unit, for a total of $750,000 In actuality, only 12 units were sold for a total of $600,000 The Hagen report concludes that the general partners inappropriately allocated more income to themselves as a result of this offering not being fully subscribed. We disagree with this conclusion The introduction to the PPM for the Burlington Limited Partnership #27 clearly states, **"the partnership is offering, exclusively by this memorandum, up to 15 units of limited partnership interests"** (See Exhibit 3) It does not say they must sell the full number of units being offered

Each unit represents a certain percentage of ownership for all of the PPMs. For example, if each unit is worth 2% and the full 15 units being offered are sold, the limited partners would be eligible for 30% of the income allocations However, if you only sell 12 units, the limited partners would only be eligible for 24% of the income allocation By default, the general partners would receive the remaining amount of income allocation This is confirmed in the definitions section of the Partnership Agreement for the definition of "Partnership Interest" That definition includes an example where the partnership interest of the General Partner is increased when less than a 1% interest is sold to a manager (See Exhibit 4) The quarterly distribution allocations to the partners also always add up to 100% In those schedules, each of the limited partners receives exactly the percentage of ownership that is stated in the PPM

Finding #3 – Initial funding of restaurants creates a debt that is over and above what is authorized in the franchise agreement.

The Hagen report concludes that the franchises were in violation of the Franchise Agreement because they borrowed more than what was allowed per that agreement As part of their procedures, Hagen reviewed the accounting records for the Burlington and Southcenter franchises We verified and agreed with the asset costs per the Hagen report to the financial statements

As part of their conclusion, Hagen is treating the capital contributions from the general partners as debt to be repaid As discussed in Finding #1 above, in the cases where tenant allowances were paid to ESRC, those funds were then contributed to the limited partnerships as capital Hagen came to their conclusion by reviewing trial balances of the partnerships **before** all the adjusting journal entries were made As of the end of each year, all amounts funded from ESRC to the partnerships were properly recorded or reclassified as capital We would also like to restate that Mr Leich (Plaintiff) reviewed all of the accounting information prior to it being sent to Mr Willett

We disagree with the conclusions of Hagen for the treatment of the amounts funded from the general partner for Burlington and Southcenter and the amount of debt was in violation of the Franchise Agreement We also reviewed the balance sheets for all partnerships in the 2001 reviewed financial statements and found all to be in compliance with the debt covenant

Finding #4 – Minimum contributions by the general partner, as listed in the PPMs, were not made.

In the report, Hagen concludes that the general partner did not make the minimum partner contribution as required by the PPM They stated three examples, Burlington, Southcenter and Coeur D'Alene We believe their conclusion comes from their reading of the "Estimated Sources and Uses of Proceeds" from each PPM. We disagree with their finding for the following reasons

- The "Estimated Sources and Uses of Proceeds" clearly states "Estimated Contribution by General Partner" It does not say that the amount is **required** to be contributed The Estimated Contribution by General Partner is an estimate because it is the amount required to balance the Sources with the Uses (See Exhibit 1)
- Section 6 of the Partnership Agreement is entitled "Capital Contributions of the Partners" Subsection (a) of Section 6, "General Partner" does not indicate any dollar amount of contribution required to be made by the General Partner (See Exhibit 5).
- As mentioned throughout our report, Hagen did not give proper credit to the general partners for their capital contributions In all cases, the General Partners contributed whatever was necessary to pay the costs of opening a new restaurant

MOSS-ADAMS LLP

Finding #5 – Subscribed units and units recorded on the books and records do not coincide.

This finding is similar to Finding #2 Hagen is concluding that income should be allocated to the limited partners in the total percentage that assumes all of the units were sold For example, in the Burlington limited partnership, if all 15 units were sold at 2 125% each, then the limited partners would be eligible for 31 875% of the allocated income We agree with that formula However, for Burlington, only 12 units were sold at 2 125% each, which results in only 25 5% of the income to be allocated to the limited partners It does not make sense that more income would be allocated to the limited partners then what they agreed to buy.

See Exhibit 6 for a copy of a Burlington partnership distribution allocation schedule In all cases, we are assuming each partner received their proper share of income as per the partnership agreement

The Coeur D'Alene partnership actually over subscribed by selling 20 units rather than 16 This is the exact opposite of Burlington As you would expect, for Coeur D'Alene, the general partner's share of income is less than is stated in the PPM because of the over subscription This indicates a consistency in methodology

The Hagen report also indicates a discrepancy in the ownership percentage of each unit for Tacoma We agree with that conclusion The 2 4% per the Partnership Agreement section on definitions is incorrect The 2.667% per the PPM is correct. The cash distribution and income allocation schedule used 2.6% in the quarter distribution schedule we reviewed Craig Edwards was not sure why that was done For all of the limited partners, the total amount of the incorrect allocation per the schedule we reviewed was $401 (39% vs. 40% of approximately $40,000) It is not a material amount, but it should be fixed

Finding #6 – The omission of minority interest on E-D and E-J joint venture combined financial statements and the E-D joint venture financial statements are not in accordance with GAAP.

Finding #7 - Joint ventures equity is materially overstated due to the omission of minority interest.

MOSS-ADAMS LLP

Finding #8 – The combined E-D and E-J joint venture financial statements omit any explanatory note as to the respective interests of each joint venture.

The Hagen report concludes that the combined financial statements were not in accordance with GAAP because they did not separately disclose the equity interests of the limited partnerships Mr Al Willett, partner of Willett Zevenbergen & Bennett, and Mr Craig Edwards, indicated that the financial statement format was selected based on input and discussions with the users of those financial statements The primary users were US Bank and the franchiser, Outback Steakhouse of Florida, Inc Mr Willett stated that he specifically discussed the format with US Bank and they indicated it was appropriate for their needs and included all relevant information In 1995, Mr Edwards provided Mr Robert Merritt, Chief Financial Officer of Outback Steakhouse of Florida, a proposed combined financial statement asking his concurrence as to the format

Mr Merritt faxed back his response that the "financials you sent me will do just fine Thanks. Bob Merritt" A copy of this information is included as Exhibit 7 of this report We agree that additional disclosures would have been required in the basic financial statements to comply with GAAP Most of the information is included in the supplemental information, but those schedules are not technically part of the basic financial statements

In this situation, we believe it is more important that the users of the financial statements receive the information they need We recommend in the future that the additional information be included in the financial statements or the auditor's report be modified to state the financial statements are not in conformity with GAAP because they do not include all necessary disclosures.

It should also be noted all of the limited partners receive year-end financial information for each of their partnerships.

Because the users of the financial statements approved the format and all relevant information is included, we do not believe that there were any misleading disclosures

MOSS ADAMS LLP

Finding #9 – Non-compliance with debt restrictions pursuant to the franchise agreements have been obscured in the audited financial statements by irregular accounting entries.

The Hagen report is concluding that certain amounts of capital contributed by the general partners was incorrectly classified as capital rather than in the "Due To ESRC" account This conclusion goes back to the earlier findings that.

- The amounts contributed by ESRC were actually liabilities/debt and not capital
- The trial balances reviewed by Hagen were not the final year-end statements Based on our discussions with Mr Al Willett, the accounting for these transactions was reviewed by Mr Leich (Plaintiff) In the accounting, the money transferred from ESRC to the limited partnerships was properly recorded as a contribution of capital by the general partner We have not seen any evidence indicating that these were anything other than a contribution of capital

The Hagen report mentions the companies cash management system After the limited partnerships were operating businesses, the general partner would sweep any excess cash from all the limited partnerships into a combined account The accounting for these transactions was properly recorded as a Due To/From ESRC. However, these were funds from operations and not from the original capital contribution

Finding #10 – Subsequent to January 1998, ESLPs were charged $15,000 each for store opening and site selection in conflict with Board of Directors' instructions.

It is our understanding that each of the limited partnerships was charged a fixed amount for site selection as documented in the PPMs This was substantiated by our review of a few of them This is a common practice in these types of business transactions The finding in the Hagen report was that Mr Edwards continued to charge the ESLPs for site selection charges, even after he was instructed to cease such practice at a 1998 meeting of the Board of Directors We have two comments in regards to this finding First, we have not been able to substantiate the Board of Directors directive We reviewed the Board of Director minutes that were made available to us and did not find minutes from any 1998 meeting

MOSS-ADAMS LLP

In addition, the Hagen report does not include an exhibit of such minutes Second, this practice of charging for site selection continues today and there is no concern it is an improper practice Exhibit 8 is an excerpt from the PPM for Restaurant #29, which indicates there is a charge of $15,000 for site selection. Because of the lack of any evidence of a Board directive, we are not sure why this was included in the Hagen report

Finding #11 – Expenses reimbursed for store opening and site selection contain numerous items not properly expensed and/or not related to store opening or site selection.

It appears that a tremendous amount of work was performed by the Hagen firm, which resulted in this finding. In addition to exhibits, the Hagen report included four schedules The first is comprised of an 80-page spreadsheet listing all expenses reported by Mr Edwards from 1995 to the present The other three schedules were comprised of a more detailed review of three shorter periods that were also included in the first schedule

We have not been able to review the actual expense reports as of the date of this report According to Mr Edwards, there were no written policies and procedures for expense reimbursements It should be noted that when companies do not record the proper information for expense reports, such expenses might be disallowed under tax audit Mr Leich (Plaintiff) would have been aware of this as he prepared all of the tax returns, which deducted these expenses

Mr Edwards is currently reviewing old expense reports to determine if there were duplications or errors As part of our review, we did examine the September and October 2000 American Express statements where the charges for the Australia trip were recorded The statements verified that the airfare and other trip related expenses were paid by Mr Edwards. In addition, many of the expenses were classified by Hagen as non-business because there may not have been proper documentation. According to Mr Edwards they were business expenses that included activities with other Outback business owners and gifts for employees and venders Hagen also mentions that incorrect exchange rates were often used on foreign currency transactions. We reviewed a few of the transactions included on the schedules and determined that both Mr Edwards and Hagen used the incorrect rates Mr Edwards estimated the amount while completing his expense report Hagen used an estimated rate as of some other date The actual amount was what was paid by American Express

We are concerned about the true nature of this finding for many reasons

- On page 24 of their report, Hagen states "these repeated and blatant duplications indicate that the intent was to be reimbursed for expenses not incurred" Hagen could not possibly know Mr Edwards intent since they never took the time to talk to him
- The report makes no mention of any firm policy for the use of a specific expense report As such, Mr Edwards was not breaking any company policy when he summarized his expenses on blank paper
- Hagen did not appear to review the expense reporting habits of any other stockholder or employee Mr Edwards states that others in the company had similar types of expenses

This finding, as well as Finding #12 below, appears to be fairly minor If the other stockholders decide to continue pursuing this finding, we recommend all expense reports be reviewed for an agreed upon period and any expense that appears to be a duplicate or inappropriate be paid back to the company by the respective stockholder This does not appear to be worthy of a significant amount of outside legal or other consulting time

Finding #12 – Other expenses have been paid on behalf of Mr. Edwards without the knowledge of other Board of Directors.

The Hagen report concludes that certain expenses were paid on behalf of Mr Edwards, which were in fact expenses that should have been paid by him personally The expenses included Mr Edwards portion of life and health insurance, etc. It is unclear how Hagen came to the conclusion that these expenses were paid on behalf of Mr Edwards without the knowledge of the other Board of Directors If the company's policies required these expenses to have been paid by Mr. Edwards, or any other shareholder or employee, then there is an argument they should be reimbursed to the company If there is no written policy, then it is a matter of opinion as to whether they should be paid back Hagen did not provide any documentation from the Board of Directors stating they were not aware of these expenses Our review of the Board minutes did not indicate such knowledge either

MOSS-ADAMS LLP

Our conclusion is that the findings in the Hagen report are either incorrect or have no material or detrimental impact to investors. We believe the findings are not significant enough to warrant legal action It appears to be a case of stockholders with different agendas who are unable to resolve their differences

This report is furnished solely for the use in the Edwards vs. Leich litigation matter

Sincerely,

W Arthur King, CPA
for Moss Adams LLP

Enclosures

WAK/jaf

\\Seasrv\VOL1\Users\ArtK\Shared\Letters\Edwards vs leich draft 2 doc

EXHIBIT 4

HALL ZANZIG CLAFLIN MCEACHERN

Trial Lawyers

February 28, 2003

Mr. David D Hoff
Ms Janissa A Strabuk
Tousley Brain Stephens PLLC
700 Fifth Avenue, Suite 5600
Seattle, Washington 98104-5056

SENT VIA FAX

Re <u>Leich v Edwards and Evergreen State Restaurant Corporation</u>

Dear David and Janissa

At the hearing before Judge Rothstein on February 26, Dave stated on the record that your clients had no objection to Mr Edwards' proposed amendment to the bylaws insuring all shareholders equal access to corporate information He assured Judge Rothstein that such access would be granted immediately without the need for amending the bylaws or a court order

Yesterday, I proposed what I thought was a reasonable arrangement I suggested that Mr Edwards call a designated individual at Evergreen a day in advance whenever he wants to review records at Evergreen He could be placed in an office or a conference room of Evergreen's choice while he is there so that he does not get in anyone's way Someone could bring the records to him so that there is no danger that he will disturb the filing system He would be willing to check out when he leaves so that someone can confirm that he does not take any records with him

You have proposed a much more burdensome arrangement that I do not believe is consistent with the concept of equal access. The only records that your clients have agreed to permit Mr Edwards to review at Evergreen are expense records For

A Professional Limited Liability Company
1200 Fifth Avenue, Suite 1414, Seattle, WA 98101
Tel 206 292 5900 Fax 206 292 5901